

GEORGIA RAILROAD
THE WESTERN RAILWAY OF ALABAMA
ATLANTA AND WEST POINT RAILROAD COMPANY

1590 MARIETTA BOULEVARD, N. W.
ATLANTA, GEORGIA 30318

November 21, 1978

RECORDATION NO. 9864 Filed 1425

NOV 22 1978 - 3 15 PM

Mr. H. G. Hottel, INTERSTATE COMMERCE COMMISSION
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 9863 Filed 1425

NOV 22 1978 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Secretary:

There is transmitted to you herewith for filing and recordation, pursuant to 49 USC §11303(a) (formerly Section 20c of the Interstate Commerce Act), duly executed counterparts of a Conditional Sale Agreement dated as of December 15, 1977 ("Conditional Sale Agreement"), between Atlanta and West Point Railroad Company ("Railroad"), as vendee, whose address is 1590 Marietta Boulevard, N.W., Atlanta, Georgia 30318, and The First National Bank of Atlanta, as vendor, whose address is Two Peachtree Street, N.E., Atlanta, Georgia 30303.

The equipment covered by the Conditional Sale Agreement is sixty (60) 50' 70-ton box cars bearing the Railroad's road numbers 51400 through 51459.

Attached hereto is a draft payable to the Treasurer of the United States covering the prescribed recordation fee for the Conditional Sale Agreement.

This letter of transmittal is signed by a designated officer of the Railroad who has knowledge of the matters set forth herein.

After recordation, please return the recorded counterparts of the Conditional Sale Agreement to:

Mr. David M. Yearwood
Special Counsel
Atlanta and West Point Railroad Company
908 West Broadway
Louisville, Kentucky 40203.

Respectfully yours,

Atlanta and West Point Railroad Company

By David M. Yearwood
David M. Yearwood
Special Counsel

Interstate Commerce Commission
Washington, D.C. 20423

11/24/78

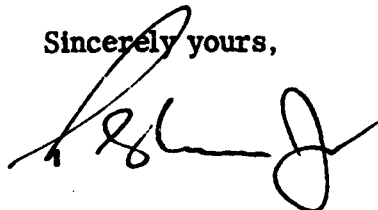
OFFICE OF THE SECRETARY

David M. Yearwood
Special Counsel
The Western Railway Of Alabama
908 West Broadway
Louisville, Kentucky 40203

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 11/22/78 at 3:15pm,
and assigned recordation number(s) 9863, 9864

Sincerely yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. *9863* Filed 1425

NOV 22 1978 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 15, 1977

between

Atlanta and West Point Railroad Company

and

The First National Bank of Atlanta

CONDITIONAL SALE AGREEMENT dated as of December 15, 1977, between the ATLANTA AND WEST POINT RAILROAD COMPANY, a Georgia corporation (hereinafter called the "Railroad"), and THE FIRST NATIONAL BANK OF ATLANTA, a national banking association organized and existing under the laws of the United States of America (hereinafter called the "Bank").

WHEREAS, ACF Industries, Incorporated (hereinafter called the "Builder") has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase sixty (60) 50' 70-ton box cars bearing the Railroad's road numbers 51400 through 51459 (hereinafter called the "Equipment");

WHEREAS, the Equipment has been delivered to the Railroad under an Agreement dated as of October 14, 1977 (hereinafter called the "User Agreement");

WHEREAS, by an Amendment Agreement and Assignment dated, or to be dated, as of December 20, 1977 (hereinafter called the "Assignment"), the Builder has, or will prior to the execution of this Agreement, assign to the Bank all of its right, title and interest in and to the Equipment, and in and to the payment by the Railroad of the purchase price (including prepaid freight charges) of the Equipment (such purchase price, including prepaid freight charges, is defined in Article 1 hereof, and is hereinafter called the "Purchase Price");

WHEREAS, prior to the execution of this Agreement and payment to the Builder of the Purchase Price of the Equipment, the Bank shall have received the documents, in form and substance satisfactory to it, set forth in Article 14;

WHEREAS, by the execution of this Agreement, the Bank acknowledges that it has received the documents required by Article 14 of this Agreement and has made payment to the Builder of the Purchase Price of the Equipment; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Purchase Price and Payment.* The Purchase Price of the Equipment is \$2,077,380.00 (sixty (60) cars at \$34,623.00 per car plus freight charges prepaid by the Builder at \$60.44 per car).

The Railroad hereby acknowledges itself to be indebted to the Bank in the amount of, and hereby promises to pay in cash to the Bank at such place as the Bank may designate, the Purchase Price of the Equipment, in sixty (60) consecutive equal (except for appropriate adjustment of the final installment in the event the amount payable pursuant to this paragraph shall not, when divided by sixty (60), result in an amount ending in an integral cent) quarterly installments, as hereinafter provided, an amount equal to the Purchase Price of the Equipment (the aggregate of said installments are hereinafter called the "Conditional Sale Indebtedness").

The installments of the Conditional Sale Indebtedness, payable pursuant to the foregoing paragraph of this Article 1, shall be payable quarterly on February 15, May 15, August 15 and November 15 in each year commencing on May 15, 1978, to and including February 15, 1993.

The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the date the Bank has paid the Builder the Purchase Price of the Equipment, at the prime lending rate of the

Bank plus three-quarters ($\frac{3}{4}$) of one percent (1%) per annum. The term "prime lending rate", as used herein, shall be the lowest minimum lending rate for loans of 90-day maturities to substantial and responsible commercial borrowers publicly quoted by the Bank. The prime lending rate of the Bank in effect on the first calendar day of each month shall, for purposes of this Agreement, be the prime lending rate of the Bank for that month, except that the prime lending rate of the Bank in effect at the time payment of the Purchase Price is made to the Builder shall be, for purposes of this Agreement, the prime lending rate of the Bank for the remaining calendar days of that month. Interest shall be, to the extent accrued, payable quarterly on February 15, May 15, August 15 and November 15 in each year, commencing February 15, 1978.

If any date for payment of any installment of the Conditional Sale Indebtedness or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day and interest shall accrue to such next succeeding business day. The term "business day or days", as used herein, means any calendar day, excluding Saturdays, Sundays and any other days on which banking institutions in Atlanta, Georgia are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve (12) 30-day months.

The Railroad will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms of this Agreement at the prime lending rate of the Bank plus one and three-quarters percent ($1\frac{3}{4}\%$) per annum until payment of the entire amount due hereunder shall have been paid.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 4 hereof, the Railroad shall not have the privilege of prepaying any installment of the Conditional Sale Indebtedness prior to the date such payment becomes due.

ARTICLE 2. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Bank for collection or other charges and will be free of expense to the Bank with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Bank solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Bank or result in a lien upon any part of the Equipment; *provided, however*, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the title or other property rights of the Bank in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Bank directly and paid by the Bank, the Railroad shall reimburse the Bank upon presentation of an invoice therefor, and any amounts so paid by the Bank shall be secured by and under this Agreement; *provided, however*, that the Railroad shall not be obligated to reimburse the Bank for any impositions so paid unless the Bank shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Bank) or unless the Railroad shall have approved the payment thereof.

ARTICLE 3. *Title to the Equipment.* The Bank shall and hereby does retain the full legal title to and property rights in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property rights in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Bank. However, the Bank, if so requested by the Railroad at that time, will (a) execute a bill of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill of sale to the Railroad at its address referred to in Article 19 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and (c) pay to the Railroad any money paid to the Bank pursuant to Article 4 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sales or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to furnish such instruments within a reasonable time after written demand by the Railroad.

ARTICLE 4. *Maintenance; Compliance with Laws and Rules; Casualty Occurrence.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on the Equipment, the Railroad will conform therewith, at its own expense; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Bank, adversely affect the title or property rights of the Bank under this Agreement.

In the event that the Equipment shall be worn out, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrence being hereinafter called a "Casualty Occurrence"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Bank in regard thereto, and, within thirty days after it has knowledge of such event, shall promptly pay to the Bank a sum equal to the unpaid portion of the Conditional Sale Indebtedness, plus accrued interest to that date.

Any money paid to the Bank pursuant to the preceding paragraph of this Article 4 shall, as the Railroad may direct in a written instrument filed with the Bank, be applied toward: (1) the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types

other than locomotives) to replace units suffering a Casualty Occurrence, or (2) the installments of the Conditional Sale Indebtedness falling due in the inverse order of maturity. In the event no direction is so received by the Bank, such moneys shall be applied by the Bank to the prepayment of the Conditional Sale Indebtedness as set forth in this paragraph.

The Bank may, if requested by the Railroad so to do, waive any payment required by the Railroad under this Article 4, or any portion thereof; *provided, however*, that any such waiver shall apply only to the specific amount, if any, which the Bank shall expressly waive.

The Railroad will cause any replacement unit or units to be marked as provided in Article 5 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Bank subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement.

Whenever the Railroad shall file with the Bank a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith, in addition to the customary settlement documents which may be required by Article 14 hereof:

(1) a certificate of the President, a Vice President or an Assistant Vice President of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) and has been marked as required by the provisions of Article 5 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Bank does not exceed the lesser of the fair value thereof and the original cost for each year in service and such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that the Bank has title to such replacement units, free and clear from all claims, liens, security interests and other encumbrances except for the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Bank pursuant to this Article 4 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or better by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000 or capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called "Investments"). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Bank on any Investments shall be held by the Bank and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Bank thereon, up to the cost (including accrued interest)

thereof, shall be held by the Bank for application pursuant to this Article 4, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Bank an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Bank in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Bank pursuant to this Article 4 (including, for this purpose, Investments) shall be applied by the Bank as if such money were money received upon the sale of Equipment pursuant to Article 13 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Bank shall, upon request of the Railroad, after payment by the Railroad of any sum pursuant to this Article 4, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 5. *Marking of the Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying road number as heretofore set forth herein, or in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate markings approved by the Bank with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Bank's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Bank by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 6. *Possession and Use.* So long as an event of default shall not have occurred under this Agreement and be continuing, the Railroad shall be entitled to the possession of the Equipment and the use thereof from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 7. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Railroad shall furnish to the Bank an accurate statement signed by an officer of the Railroad (a) setting forth as of the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and

state of repair of the Equipment as the Bank may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 5 hereof have been preserved or replaced. The Bank shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Bank may request during the term of this Agreement.

ARTICLE 8. *Prohibition Against Liens.* The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment equal or superior to the Bank's title thereto or property rights therein; *provided, however,* that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the title or property rights of the Bank in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Bank in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 9. *Railroad's Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Bank from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Bank of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in such Bank or the transfer of title to the Equipment by the Bank pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 10. *Patent Indemnities.* The Builder has agreed that it will, at its own expense, defend and save the Railroad harmless in all suits or proceedings instituted against the Railroad for patent infringement; *provided, however,* that the Railroad immediately reports, in writing, such claims to the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

ARTICLE 11. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession and use by the Railroad of the Equipment without first obtaining the written consent of the Bank. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Bank, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Bank under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Bank and reassigned by any assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as

the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The rights of the Bank or any assignee of the Bank hereunder shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

ARTICLE 12. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to-wit:

(a) the Railroad shall fail to pay in full any installment of the Conditional Sale Indebtedness, or interest thereon, or any other sum payable by the Railroad as provided in this Agreement within thirty days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than thirty days after the Bank shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Bank for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within thirty days after such appointment, if any, or sixty days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of the Equipment;

then at any time after the occurrence of such an event of default the Bank may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Bank, declare (hereinafter called a "Declaration of Default") the entire Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Conditional Sale Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 1 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Bank shall thereupon be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Bank of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Bank may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 13. *Remedies.* At any time during the continuance of a Declaration of Default, the Bank may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Bank, take or cause to be taken by its agent or agents immediate possession of the Equipment without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 13 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace).

At any time during the continuance of a Declaration of Default, the Bank (after retaking possession of the Equipment as hereinbefore in this Article 13 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness arising hereunder and make such disposition thereof as the Bank shall deem fit. Written notice of the Bank's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 19 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Bank should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Bank as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Bank the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further*, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Bank within thirty (30) days from the receipt of notice of the Bank's election to retain the Equipment, then the Bank may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Bank shall have given no notice to retain as hereinabove

provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 13.

At any time during the continuance of a Declaration of Default, the Bank, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Bank may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale shall be credited on the amount due to the Bank under the provisions of the Agreement.

Any sale hereunder may be held or conducted at such place and at such time as the Bank may specify and in general in such manner as the Bank may determine. The Bank or the Railroad may bid for and become the purchaser of the Equipment so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or certified mail addressed to the Railroad as provided in Article 19 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than ten railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Bank shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 13), and in payment of the purchase price therefor the Bank shall be entitled to have credited on account thereof all or any part of the sums due to the Bank from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission by the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Bank's rights or the Railroad's obligations hereunder. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Bank's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Bank under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Bank upon demand, together with the interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 1 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Bank may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall be paid to the Railroad.

The foregoing provisions of this Article 13 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 14. *Receipt of Closing Documents and Payment to Builder.* Prior to the execution of this Agreement and payment to the Builder of the Purchase Price of the Equipment, the Bank hereby acknowledges that it has received the following documents, which are in form and substance satisfactory to it:

(a) A bill of sale from the Builder to the Bank transferring to the Bank title to the Equipment, warranting to the Bank and the Railroad that at the time of delivery of the Equipment to the Railroad the Builder had legal title to the Equipment and good and lawful right to sell the Equipment and that title to such Equipment was free and clear of all claims, liens and encumbrances of any nature and covenanting to warrant and defend the title to the Equipment against all claims and demands whatsoever;

(b) A certificate or certificates of inspection and acceptance evidencing the inspection and acceptance of the Equipment by the Railroad;

(c) An invoice of the Builder for the Equipment approved by the Railroad;

(d) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of the State of New Jersey and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iii) the Bank is vested with all the rights, titles, powers, privileges and remedies purported to be assigned to the Bank by the Assignment, and (iv) title to the Equipment is validly vested in the Bank by reason of the bill of sale from the Builder to the Bank and that at the time the Equipment was delivered to the Railroad the Equipment was free of all claims, liens, security interests and other encumbrances;

(e) A resolution of the Board of Directors of the Railroad authorizing the financing of the Equipment;

(f) A certificate of incumbency of the Railroad;

(g) Appointment by the Railroad of an authorized representative to accept the Equipment pursuant to (b) of this Article 14; and

(h) An opinion of counsel for the Railroad stating that (i) the Railroad is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia, is duly licensed or qualified as a foreign corporation in all states wherein the character of the properties owned or the nature of the business transacted by it makes licensing as a foreign corporation necessary and has all requisite power to own its property and carry on its business as presently conducted, (ii) the execution, delivery and performance by the Railroad of the documents relating to the Equipment have been duly authorized by all necessary corporate action and have been duly executed by the Railroad and, assuming proper authorization and execution thereof by the other parties thereto, said instruments constitute valid and binding agreements of the parties thereto enforceable against the Railroad in accordance with their terms, (iii) the User Agreement and the Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filings and recordings perfect the Bank's security interest in and to the Equipment, (iv) no approval, consent, filing, recording or giving of notice with any governmental unit or regulatory body is necessary in order to protect the security interest of the Bank in and to the Equipment, (v) the execution and delivery by the Railroad of the documents relating to the Equipment will not violate any provisions of law, any order of court or governmental agency, the Charter or By-Laws of the Railroad nor result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, license, permit, lease or any other agreement or instrument to which the Railroad is a party or by which it may be bound, and (vi) there are no law suits or proceedings which, if adversely determined, would have a material adverse impact upon the Railroad.

The foregoing opinions of counsel may be qualified by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency or other laws affecting creditors' rights in general.

ARTICLE 15. *Opinion of Counsel for Railroad.* Upon execution, and recording of this Agreement pursuant to Article 17 hereof, the Railroad will furnish to the Bank an opinion of counsel for the Railroad to the effect that:

(a) this Agreement has been duly authorized, executed and delivered by the Railroad and is a legal, valid and binding instrument, enforceable against the Railroad in accordance with its terms;

(b) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of this Agreement; and

(c) this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recording is necessary for the protection of the rights of the Bank in any state of the United States of America or in the District of Columbia.

ARTICLE 16. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law or any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Bank's rights under this Agreement and any and all rights of redemption.

ARTICLE 17. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Bank for the purpose of proper protection, to the satisfaction of counsel for the Bank, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Bank certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Bank.

ARTICLE 18. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder, the Bank and for any party acquiring interests in the first assignment) incident to this Agreement and such first assignment, and any instrument supplemental or related hereto or thereto.

ARTICLE 19. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 1590 Marietta Boulevard, N. W., Atlanta, Georgia 30318,

(b) to the Bank, at Two Peachtree Street, N. E., Atlanta, Georgia 30303,

or at such other address as may have been furnished in writing by either party to the other party to this Agreement.

ARTICLE 20. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

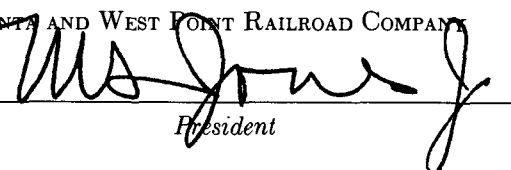
This Agreement, including any supplement hereto, exclusively states the rights of the Bank and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Bank and the Railroad.

ARTICLE 21. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

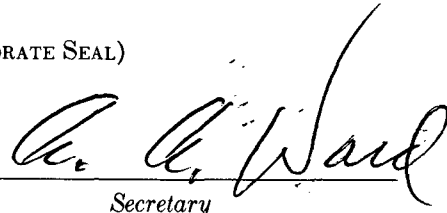
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

ATLANTA AND WEST POINT RAILROAD COMPANY

By 
President

(CORPORATE SEAL)

Attest:

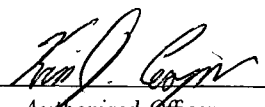

Secretary

THE FIRST NATIONAL BANK of ATLANTA

By 
Group Vice President

(CORPORATE SEAL)

Attest:

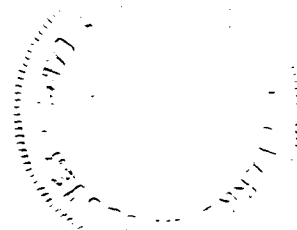

Authorized Officer
ASSISTANT VICE PRESIDENT

STATE OF GEORGIA }
COUNTY OF FULTON } ss:

On this 4th day of October, 1978, before me personally appeared M. S. Jones, Jr., to me personally known, who, being by me duly sworn, says that he is President of the ATLANTA AND WEST POINT RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jeanne H. Glover
Notary Public

My Commission expires
Notary Public, Georgia, State At Large
(NOTARIAL SEAL) My Commission Expires Feb. 26, 1980



STATE OF GEORGIA }
COUNTY OF FULTON } ss:

On this 15th day of November, 1978, before me personally appeared J. Abbott Whitney, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST NATIONAL BANK OF ATLANTA, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Margie V. Mote
Notary Public

My Commission expires

(NOTARIAL SEAL)

Notary Public, Georgia State at Large
My Commission Expires Sept. 7, 1981

